

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-
GUERRA, MICHAEL MAERLENDER, BRANDON
PIYEVSKY, BENJAMIN SHUMATE, BRITTANY
TATIANA WEAVER, and CAMERON WILLIAMS,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE
OF TECHNOLOGY, UNIVERSITY OF CHICAGO,
THE TRUSTEES OF COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK, CORNELL
UNIVERSITY, TRUSTEES OF DARTMOUTH
COLLEGE, DUKE UNIVERSITY, EMORY
UNIVERSITY, GEORGETOWN UNIVERSITY, THE
JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS
INSTITUTE OF TECHNOLOGY, NORTHWESTERN
UNIVERSITY, UNIVERSITY OF NOTRE DAME DU
LAC, THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, WILLIAM MARSH RICE
UNIVERSITY, VANDERBILT UNIVERSITY, and
YALE UNIVERSITY,

Defendants.

Case No. 1:22-cv-00125

Hon. Matthew F. Kennelly

**JOINT STATUS REPORT
NOVEMBER 22, 2023**

1

[REDACTED]

B. PENDING MOTIONS

On November 15, 2023, the parties filed these motions to be heard on November 28:

- (1) Plaintiffs' Motion to Modify the Case Management Order #1;
- (2) Plaintiffs' Motion to Designate Georgetown's President and His Assistant as Custodians and to Compel Georgetown to Produce Documents; and
- (3) Defendants' Motion to Compel Responses to Defendants' Second Set of Interrogatories.

C. COMPLETED AND PENDING DEPOSITIONS

Plaintiffs have taken and completed nearly 40 depositions, and Defendants have taken depositions of each of the named Plaintiffs. In addition, approximately 20 depositions are scheduled, another 10 have been formally or informally noticed but not yet scheduled, and

Plaintiffs anticipate noticing at least 40 additional depositions, including depositions of Rule 30(b)(6) representatives, third parties, and witnesses associated with settling defendants.

D. FERPA NOTICES

On October 5, 2023, the Court granted Plaintiffs' Motion to Compel Regarding FERPA Notices and issued an order (ECF 459) requiring certain Defendants (the "FERPA Defendants") to send notices to the students Plaintiffs had identified. Of the remaining FERPA Defendants (Cornell, Georgetown, and Penn), Cornell and Georgetown sent out the required Notices by the end of October, and Penn completed the process on November 3. On November 9, Cornell Doe Students 1-9 filed objections (ECF 496) pursuant to the Court's Order Regarding FERPA and the Production of Certain Documents and Information dated October 26, 2022 (ECF 231) ("FERPA Order"). On November 17, Georgetown Doe Students 1-19 (ECF 508-509) and Penn Doe Students 1-8 (ECF 507) filed objections.

Under paragraph 3 of the FERPA Order, "the parties" may file responses to student objections "within 30 days after such filing"—which would mean Monday, December 9 for responses to the Cornell Doe Students, and Monday, December 18 for responses to the Georgetown and Penn Doe Students. To avoid duplicative submissions, Plaintiffs respectfully suggest that the Court set December 18 as the date for Plaintiffs to file a single, 15-page response to all student objections and for the FERPA Defendants also to file a single, 15-page response. If the FERPA Defendants agree to this schedule, the parties will file a Consent Order.

With respect to the students to whom Plaintiffs requested that FERPA notices be sent but *who did not file objections* ("non-objecting students"), Plaintiffs note that the FERPA Defendants "may produce the requested documents and information without prior consent if the affected student has not sought protection from the Court within 30 days of the date on which the

Defendant distributes the Notice.” (FERPA Order ¶ 4.) Plaintiffs have calculated that there are 9 non-objecting students from Georgetown, 26 from Penn, and none from Cornell. With respect to these 35 non-objecting students, under this Court’s FERPA Order, Georgetown and Penn are no longer constrained by FERPA and may lawfully produce the documents that Plaintiffs have previously requested for those students: (1) the admission files for each student or, at a minimum, documents sufficient to show each student’s academic data (SAT/ACT scores, AP grades, GPA, Class Rank, etc.), as well as any Ratings used to admit or deny students for admission; and (2) all documents located in the Admissions, President’s or Development Offices concerning any donations by each student’s parents (or their capacity to make such donations), including any correspondence with those parents. (*See* Plaintiffs’ Memorandum in Support of Motion to Compel FERPA Notices and Produce Documents, filed Sept. 25, 2023 (ECF 443-1) at 5).¹

Although Plaintiffs believe that a motion to compel is unnecessary as to students who have not even objected to the production of their FERPA records, Penn (on behalf of itself and Georgetown) have insisted that Plaintiffs proceed by formal motion, which of course will only further delay discovery. While Penn has suggested that it might be willing in the context of a meet and confer to consider producing some of the documents requested, Georgetown has not made a similar suggestion. In addition, Plaintiffs have been advised that neither Defendant is available for a meet and confer until after the status conference—although Plaintiffs offered to meet and

¹ In addition, based on recent discovery, Georgetown and Penn should produce, for each non-objecting students, all documents concerning that student’s inclusion on the President’s List (for Georgetown) or designation as [REDACTED], and/or included in the following documents: PENN568-LIT-00158475, PENN568-LIT-00162228, PENN568-LIT-0016323, PENN568-LIT-00163325, PENN568-LIT-00163324.

confer on Monday (not “over the holiday weekend” as Defendants incorrectly state). Under these circumstances, Plaintiffs are prepared to file their motion imminently.²

E. DEFENDANTS’ MISCHARACTERIZATION OF AEO TESTIMONY

Defendants have included in their section of the JSR a demonstrably false characterization of a named Plaintiff’s AEO deposition testimony. That individual testified that she had gone to acting school with the daughter of a lead counsel for Plaintiffs, with whom she was friends on Facebook, who asked if she would talk with her father.

II. DEFENDANTS’ STATEMENT OF RELEVANT ISSUES

A. Status of Discovery

Plaintiffs have now served 96 Requests for Production on each Defendant, and all Defendants have provided their responses and objections. Putting aside pending motions to compel, all Defendants have completed their document productions, save for any supplemental productions in response to Plaintiffs’ Fifth RFPs (served on September 29), which are forthcoming shortly, and the supplemental productions of documents and structured data to be made in February 2024 in accordance with the Court’s March 8, 2023 Order (ECF No. 330). Some very small additional supplemental productions may also be forthcoming, but those are expected to be de minimis. To date, Defendants collectively have produced more than 3.6 million pages of documents. In terms of written discovery, Plaintiffs served 16 interrogatories in April 2023 and another 29 interrogatories at the end of September. Responses and objections have been served

² Plaintiffs note that the dispute described above arose after the Nov. 15 deadline for filing motions to be heard at this month’s status conference -- because the 14-day deadline under this Court’s FERPA Order for all student objections to be filed had not yet elapsed. Plaintiffs also note that if the Court in December overrules the objections by the Cornell, Georgetown and Penn “Doe” Students, Plaintiffs are entitled to and will if required move to compel the same production for each of the objecting students as for the non-objecting students (including production from Cornell related to that Defendant’s Watch Lists).

by all Defendants. Plaintiffs served 45 Requests for Admission on September 30, and responses and objections have likewise been served by all Defendants. Plaintiffs requested to meet and confer as to certain Defendants' responses to certain interrogatories and requests for admission on November 6 and 9, and Defendants' provided their positions as to those discovery responses prior to November 15, 2023; some supplemental responses are forthcoming from some Defendants. Plaintiffs did not move to compel as to any Defendant's responses to any Interrogatories or Requests for Admission prior to the current deadline.

Defendants served 29 Requests for Production on Plaintiffs in September 2022, and Plaintiffs provided their responses and objections in October 2022. Defendants have taken the deposition of each named Plaintiff. Defendants served a total of 45 Interrogatories on Plaintiffs as of the September 30, 2023 deadline, and Plaintiffs' responses are now the subject of a pending motion. Defendants also served 50 RFAs on September 30 and responses and objections were served on October 30, 2023.

Consistent with the current Case Management Order, the deadline for all written discovery was September 30th, and subject to the pending motions, written discovery is now complete.

B. Plaintiffs' Failure to Produce Certain Responsive Documents

Defendants have only recently learned that Plaintiffs appear not to have produced certain documents responsive to Defendants' Requests for Production. For example, in a deposition on November 14, 2023, a named Plaintiff testified that she was first contacted regarding this lawsuit through written communications with a child of lead counsel for Plaintiffs. These communications are responsive to Defendants' Requests for Production 10, 12, and 21, yet they have not yet been produced. Similarly, Defendants have recently received from nonparties communications with Plaintiffs and their counsel that Plaintiffs have not produced. Defendants are in the process of

conferring with Plaintiffs regarding the scope of the documents not produced and it may be necessary for Defendants to seek leave to file a motion to compel if an agreement cannot be reached.

C. FERPA Notices

Plaintiffs conveyed their request that Defendants produce documents relating to students who received FERPA notices the afternoon of November 21, 2023, in a draft Joint Status Report sent to Defendants just one day before the Joint Status Report was due. On the day this Report was due, Plaintiffs demanded a meet and confer the same day and are now criticizing Defendants for not being available over the holiday weekend to discuss. Defendants are willing to meet and confer with Plaintiffs in good faith on this topic on Tuesday, or as soon as practicable thereafter, once counsel have had an opportunity to consult with their clients. (Georgetown has not yet had that opportunity.) Defendants hope that will avoid the need for motions practice. If that effort is unsuccessful, Defendants will explain their position on this request in an opposition brief to a potential motion to compel, should one be filed. *Cf.* August 24, 2023 Order, ECF No. 436 (“All future status reports are to include detailed information regarding the status of discovery and any updates on settlement. Any disputes on which a party seeks a ruling by the Court must be filed as motions.”).³

Dated: November 22, 2023

Respectfully Submitted,

By: /s/ Edward J. Normand
Devin “Vel” Freedman

By: /s/ Jon Roellke
Jon R. Roellke

³ Plaintiffs are transparently trying to get the Court to rule on this issue at the status conference without having to brief it, in violation of the Court’s orders. There are many reasons why the Court should not do so, not least the fact that Defendants do not even know the full scope of information that Plaintiffs seek. For example, Plaintiffs’ new request for Penn’s [REDACTED] [REDACTED] should have been put in a Request for Production. If Plaintiffs are suggesting something nefarious about these lists, however, the record shows otherwise.

Edward J. Normand
Peter Bach-y-Rita
Richard Cipolla
FREEDMAN NORMAND
FRIEDLAND LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel.: 646-970-7513
vel@fnf.law
tnormand@fnf.law
pbachyrta@fnf.law
rcipolla@fnf.law

/s/ Robert D. Gilbert

Robert D. Gilbert
Elpidio Villarreal
Robert S. Raymar
David Copeland
Steven Magnusson
GILBERT LITIGATORS & COUNSELORS,
P.C.
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com
rraymar@gilbertlitigators.com
dcopeland@gilbertlitigators.com
smagnusson@gilbertlitigators.com

Eric L. Cramer
Ellen T. Noteware
David Langer
Jeremy Gradwohl
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel.: 215-875-3000
ecramer@bm.net
enoteware@bm.net
dlanger@bm.net
Jgradwohl@bm.net

Richard Schwartz
BERGER MONTAGUE PC

MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
Tel.: 202-739-5754
jon.roellke@morganlewis.com

Noah J. Kaufman
MORGAN, LEWIS & BOCKIUS LLP
One Federal Street
Boston, MA 02210
Tel.: 617-341-7590
noah.kaufman@morganlewis.com

Counsel for Defendant Brown University

By: /s/ Deepti Bansal

Deepti Bansal
Alexander J. Kasner
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Tel.: 202-728-7027
dbansal@cooley.com
akasner@cooley.com

Matthew Kutcher
COOLEY LLP
110 N. Wacker Drive
Chicago, IL 60606
Tel.: 312-881-6500
mkutcher@cooley.com

*Counsel for Defendant California Institute
of Technology*

By: /s/ James L. Cooper

James L. Cooper
Michael Rubin
ARNOLD & PORTER KAYE SCHOLER
LLP
601 Massachusetts Avenue, NW
Washington, D.C. 20001-3743
Tel.: 202-942-5014
James.Cooper@arnoldporter.com
Michael.Rubin@arnoldporter.com

1720 W Division
Chicago, IL 60622
Tel: 773-257-0255
rschwartz@bm.net

Daniel J. Walker
Robert E. Litan
Hope Brinn
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Tel.: 202-559-9745
rlitan@bm.net
dwalker@bm.net
hbrinn@bm.net

Counsel for Plaintiffs

Valarie Hays
ARNOLD & PORTER KAYE SCHOLER
LLP
70 W Madison Street
Suite 4200
Chicago, IL 60602
Tel.: 312-583-2440
Valarie.Hays@arnoldporter.com

*Counsel for Defendant University of
Chicago*

By: /s/ Amy Van Gelder
Amy Van Gelder
John Kocoras
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
155 N. Wacker Drive
Chicago, IL 60606-1720
Tel.: 312-407-0508
amy.vangelder@skadden.com
john.kocoras@skadden.com

Karen Hoffman Lent
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
One Manhattan West
Room 40-216
New York, NY 10001-8602
Tel.: 212-735-3276
karen.lent@skadden.com

*Counsel for Defendant The Trustees of
Columbia University in the City of New
York*

By: /s/ Norman Armstrong
Norman Armstrong
Christopher C. Yook
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
Tel.: 202-626-8979
narmstrong@kslaw.com

cyook@kslaw.com

Emily T. Chen
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
Tel.: 212-556-2224
echen@kslaw.com

Zachary T. Fardon
KING & SPALDING LLP
110 N Wacker Drive
Suite 3800
Chicago, IL 60606
Tel.: 312-764-6960
zfardon@kslaw.com

Counsel for Defendant Cornell University

By: /s/ Terri L. Mascherin
Terri L. Mascherin
Reid J. Schar
JENNER & BLOCK LLP
353 N. Clark Street,
Chicago, IL 60654-3456
Tel.: 312-222-9350
tmascherin@jenner.com
rschar@jenner.com

Ishan K. Bhabha
Douglas E. Litvack
Lauren J. Hartz
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Tel.: 202-637-6327
ibhabha@jenner.com
dlitvack@jenner.com
lhartz@jenner.com

*Counsel for Defendant Trustees of
Dartmouth College*

By: /s/ Christopher D. Dusseault
Christopher D. Dusseault (pro hac vice)
cdusseault@gibsondunn.com
Jacqueline L. Sesia
jsesia@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel.: (213) 229-7000

James A. Morsch
Jim.morsch@saul.com
SAUL EWING LLP
161 North Clark, Suite 4200
Chicago, IL 60601
Tel.: (312) 876-7100
Facsimile: (312) 876-0288
IL Attorney ID #6209558

Counsel for Defendant Duke University

By: /s/ Tina M. Tabacchi
Tina M. Tabacchi
JONES DAY
110 North Wacker Drive
Suite 4800
Chicago, IL 60606
Tel.: 312-782-3939
tmtabacchi@jonesday.com

Craig A. Waldman
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113
Tel.: 202-879-3877
cwaldman@jonesday.com

Counsel for Defendant Emory University

By: /s/ Britt M. Miller
Britt M. Miller
Daniel T. Fenske
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
Tel.: 312-783-0600

bmillerr@mayerbrown.com
dfenske@mayerbrown.com

*Counsel for Defendant Georgetown
University*

By: /s/ Jeffrey J. Bushofsky
Jeffrey J. Bushofsky
ROPES & GRAY LLP
191 North Wacker Drive 32nd Floor
Chicago, IL 60606-4302
Tel.: 312-845-1200
jeffrey.bushofsky@ropesgray.com

Chong S. Park
Samer M. Musallam
ROPES & GRAY LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006-6807
Tel.: 202-508-4600
chong.park@ropesgray.com
samer.musallam@ropesgray.com

*Counsel for Defendant Johns Hopkins
University*

By: /s/ Eric Mahr
Eric Mahr
Jan Rybnicek
Daphne Lin
FRESHFIELDS BRUCKHAUS
DERINGER
700 13th Street, NW
Washington, DC 20005
Tel.: 202-777-4500
eric.mahr@freshfields.com
jan.rybnicek@freshfields.com
daphne.lin@freshfields.com

*Counsel for Defendant Massachusetts
Institute of Technology*

By: /s/ Scott D. Stein
Scott D. Stein
Kathleen L. Carlson
Benjamin R. Brunner

SIDLEY AUSTIN LLP
1 South Dearborn Street
Chicago, IL 60603
Tel.: 312-853-7520
sstein@sidley.com
kathleen.carlson@sidley.com
bbrunner@sidley.com

*Counsel for Defendant Northwestern
University*

By: /s/ Robert A. Van Kirk
Robert A. Van Kirk
Jonathan B. Pitt
Sarah F. Kirkpatrick
Matthew D. Heins
Cole T. Wintheiser
William J. Donnelly
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, D.C. 20024
Tel.: 202-434-5000
rvankirk@wc.com
skirkpatrick@wc.com
jpitt@wc.com
mheins@wc.com
cwintheiser@wc.com
wdonnelly@wc.com

James Peter Fieweger
MICHAEL BEST & FRIEDRICH LLP
444 West Lake Street
Suite 3200
Chicago, IL 60606
Tel.: 312-222-0800
jpfieweger@michaelbest.com

*Counsel for Defendant University of Notre
Dame du Lac*

By: /s/ Seth Waxman
Seth Waxman
WILMER CUTLER PICKERING HALE
AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006

Tel.: 202-663-6800
seth.waxman@wilmerhale.com

David Gringer
Alan Schoenfeld
WILMER CUTLER PICKERING HALE
AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel.: 212-937-7294
david.gringer@wilmerhale.com
alan.schoenfeld@wilmerhale.com

Daniel Martin Feeney
Edward W. Feldman
MILLER SHAKMAN LEVINE &
FELDMAN LLP
180 North LaSalle Street
Suite 3600
Chicago, IL 60601
Tel.: 312-263-3700
dfeeney@millershakman.com
efeldman@millershakman.com

*Counsel for Defendant The Trustees of the
University of Pennsylvania*

By: /s/ Norman Armstrong
Norman Armstrong
Christopher C. Yook
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
Tel.: 202-626-8979
narmstrong@kslaw.com
cyook@kslaw.com

Emily T. Chen
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
Tel.: 212-556-2224
echen@kslaw.com

Zachary T. Fardon
KING & SPALDING LLP
110 N Wacker Drive
Suite 3800
Chicago, IL 60606
Tel. 312-764-6960
zfardon@kslaw.com

*Counsel for Defendant William Marsh Rice
University*

By: /s/ J. Mark Gidley
J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005-3807
Tel.: 202-626-3600
mgidley@whitecase.com

Robert A. Milne
David H. Suggs
WHITE & CASE LLP
1221 Avenue of the Americas
New York, NY 10020-1095
Tel.: 212-819-8200
rmilne@whitecase.com
dsuggs@whitecase.com

*Counsel for Defendant Vanderbilt
University*

By: /s/ Charles A. Loughlin
Charles A. Loughlin
Benjamin F. Holt
Jamie Lee
Molly Pallman
Christopher Fitzpatrick
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Tel.: 202-637-5600
chuck.loughlin@hoganlovells.com
benjamin.holt@hoganlovells.com
jamie.lee@hoganlovells.com
molly.pallman@hoganlovells.com

chris.fitzpatrick@hoganlovells.com

Stephen Novack
Stephen J. Siegel
Serena G. Rabie
ARMSTRONG TEASDALE LLP
100 North Riverside Plaza, 15th Floor
Chicago, IL 60606-1501
Tel.: 312-419-6900
snovack@atllp.com
ssiegel@atllp.com
srabie@atllp.com

Counsel for Defendant Yale University